IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4592 of 2007()

CRIME NO.517/2007 OF CHENGAMANAD POLICE STATION, ERNAKULAM DISTRICT

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: PETITIONER/ACCUSED:

P.K. JIJO, AGED 31 YEARS,
S/O. KOCHAPPU, PANIKULAMGARA HOUSE,
NORTH KUTHIYATHODU P.O., KUTHIYATHODU.

BY ADV. SRI.V.A.PRADEEP KUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 4592 of 2007

Dated this the 31st day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. There are altogether 5 accused persons. The petitioner, the 1st accused allegedly has ill will and animosity against the defacto complainant. Accused 2 and 5 are allegedly hired offenders whose services were procured by the petitioner. The crux of the allegations is that all the accused persons allegedly attacked the defacto complainant with hockey sticks and wooden sticks causing injuries to him. In the F.I.R, the petitioner is named. Investigation is in progress. The petitioner has not been arrested so far. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Admittedly there is strain in the relationship between the petitioner and the defacto complainant. It is also not disputed that the defacto complainant was attacked by a group of unknown persons. The crux of the contention is that the petitioner is being dragged into this incident unnecessarily solely because of the strain in their relationship. The alleged incident took place on 30.06.07. Directions under Section 438 Cr.P.C may be issued

in favour of the petitioner to save him from the vexatious arrest and detention, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. All the available inputs point convincingly to the complicity and involvement of the petitioner in the alleged offence. Nature of weapons used, the circumstances under which these are used and the nature of the alleged motive do all satisfactorily justify the allegations raised. At any rate, this is not a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to find any features in this case, which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner is named in the F.I.R, though the name of no accused person is seen recorded in the wound certificate when the victim narrated the alleged cause. I am satisfied, in the facts and circumstances of this case that this is an eminently fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-